



Pennsylvania court: Law used to seize gun isn't a law

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A court in Pennsylvania ruled earlier this month that a trial judge used a nonexistent law to seize a gun from a man who waved his weapon at a driver during a road rage incident.

According to court records, Justin Irland brandished his legally-owned pistol at a driver who was tailgating him in late 2013. He was charged with several misdemeanors related to the incident, and pleaded guilty to one, requesting he get his gun back in the process.

According to the [Patriot-News](#), Judge Thomas R. Campbell, a trial judge in Adams County, ruled there was a “substantial nexus” between Irland’s 9 mm pistol and the crime Irland committed. Campbell ordered the gun destroyed.

Irland appealed the decision, and an appeals court panel sided with him earlier this month, saying a so-called “common law forfeiture” — a throwback to pre-Revolutionary American governance — isn’t a part of modern Pennsylvania law.

“We conclude that common law forfeiture, as that concept originated and developed in England, was never incorporated into or became part of our Commonwealth’s common law tradition,” wrote Judge Patricia A. McCullough in the court’s ruling Jan. 13, adding the “Pennsylvania Constitution of 1790 ... denounces and effectively abolishes any notion of common law forfeiture.”

“Therefore, absent a statute that specifically authorizes the forfeiture of property, the Commonwealth and the courts have no authority to seek and order forfeiture of so-called derivative contraband,” McCullough wrote.

In other words, officials in Adams County used an obsolete, nonexistent law to seize Irland’s gun. They can’t take the weapon without a specific statute enacted by the legislature that outlines forfeiture of property involved in so-called summary offenses, or minor offenses, like the misdemeanor disorderly conduct charge Irland pled guilty to.

There are statutes on the books in Pennsylvania that allow forfeiture in instances such as drug-related crimes, but not in summary offenses, according to the [Philly Voice](#).

Three Superior Court decisions in Pennsylvania in the 1980's had approved common law seizures, according to the Cato Institute — the Charles Koch founded, D.C.-based think tank. This month's decision has implications for future cases like Irland's.

“The practical result is that law enforcement in Pennsylvania — as is the norm in other states — must either point to an authorizing statute or hand a seized item back,” wrote Walter Olson in a Cato Institute **post** last week.

In her ruling, McCullough noted that while her court sided with him, it “does not in any way condone Irland's behavior.”

Officials in Adams County could take the case to the state Supreme Court.